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IN THE

Supreme Court of the United States

JANUARY TERM 1981

SEATTLE SCHOOL DISTRICT NO. 1, et al.,
Appellees,

v.

STATE OF WASHINGTON, et al.,
Appellants.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION TO DISMISS OR AFFIRM
OF AMERICAN CIVIL LIBERTIES UNION, et al.,
(SEATTLE INTERVENOR PLAINTIFFS)
and
EAST PASCO NEIGHBORING COUNCIL, et al.,
(PASCO INTERVENOR PLAINTIFFS)

FREDERICK L. NOLAND
MacDONALD, HOAGUE & BAYLESS
1500 Hoge Building
Seattle, Washington 98104
(206) 622-1604
Attorneys for American Civil Liberties Union of Washington, et al.

WILLIAM H. NEUKOM
SHIDLER, McBROOM, GATES & BALDWIN
1000 Norton Building
Seattle, Washington 98104
(206) 223-4666
Attorneys for Seattle Urban League, et al.

ABCD AT CRAFTSMAN PRESS, SEATTLE

WILLIAM L. E. DUSSAULT
219 East Galer Street
Seattle, Washington 98102
(206) 324-4300
Attorneys for American Friends Service Committee, et al.

PHILIP L. BURTON
BURTON, CRANE & BELL
1830 Bank of California Center
Seattle, Washington 98164
(206) 623-2468
Attorneys for Seattle Branch, National Association for Advancement of Colored People, et al.

HALL BAETZ
STEW COGAN
DAVIS, WRIGHT, TODD, RIESE & JONES
4200 Seattle-First National Bank Building
Seattle, Washington 98154
(206) 622-3150
Attorneys for East Pasco Neighborhood Council, et al.

THOMAS A. LEMLY
DAVIS, WRIGHT, TODD, RIESE & JONES
4200 Seattle-First National Bank Building
Seattle, Washington 98154
Attorneys for Church Council of Greater Seattle, et al.

JAMES S. ROGERS
FRANCO, ASIA, BENSUSSEN COE & FINEGOLD
13th Floor, Tower Building
Seattle, Washington 98101
(206) 624-5622
Attorneys for Seattle Chapter of the American Jewish Council

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JOINDER OF MOTION WITH MOTION OF
SCHOOL DISTRICT APPELLEES

The Seattle intervenor plaintiffs and the Pasco intervenor plaintiffs[1] join the school district appellees[2] in moving the

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[1] A complete list of these intervenor plaintiffs is set out in footnote 2 of the Jurisdictional Statement of the State of Washington.

[2] A complete list of the school district appellees and the individual plaintiffs joined with them throughout this litigation is found at Appendix D of the state's Jurisdictional Statement.

Court to dismiss the appeal of the State of Washington and CiVIC for failure to present any substantial federal question. The Seattle and Pasco intervenor plaintiffs/ appellees adopt the statement in the Motion to Dismiss or Affirm of the school district appellees with respect to the issues presented, the nature of the case, and the basic argument in support of the motion.

The statute declared unconstitutional by the lower courts is nothing more or less than a racial classification for which a compelling state interest is neither claimed nor exists. While wishing not to belabor the thorough analyses in the decisions of the lower courts and the brief of the school district appellees, these appellees do wish to comment upon a few aspects of the matter before the Court.

The state argues at page 19 of its Jurisdictional Statement that Initiative

350 "[r]eflects the [n]ational [n]eighborhood [s]chool [p]olicy [a]dopted by Congress", citing the Equal Educational Opportunities Act of 1974 (20 U.S.C. § 1701, et seq.). However, The state's argument ignores the provisions of that same federal statute which explicitly obligate any school district which has formerly practiced deliberate segregation to take affirmative steps to desegregate, and authorize all federal courts, departments, and agencies to approve any desegregation plan going beyond that which federal agencies could compel, if the plan is voluntarily proposed by local school authorities.[3] That legislation clearly shows that national policy is one of encouraging local school authorities to desegregate so as to avoid recourse to the

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[3]The pertinent provisions of the Equal Educational Opportunity Act of 1974 are:

federal courts. It is Initiative 350 and not the decisions of the courts below that is in conflict with basic national policy, by prohibiting local school boards from adopting voluntary desegregation plans, even where the existing segregation may be

(footnote cont.)

> 20 U.S.C.§ 1703(b). Denial of equal educational opportunities prohibited
>
> . . . .
>
> (6) The failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with subpart 4 of this subchapter, to remove the vestiges of a dual school system.
>
> 20 USC § 1716. Voluntary adoption of remedies
>
> Nothing in this subchapter prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this subchapter nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this subchapter, if such plan is voluntarily proposed by the appropriate educational agency.

the result of deliberate past actions of such local authorities.

The proponents of Initiative 350 claim that they have no quarrel with the goal of desegregating the public schools. They have, they say, only a difference of opinion with the Seattle School Board over what methods should be used. This claim rings hollow in light of the district court's unchallenged finding that it would be impossible to effect racial balance in Seattle's schools without using some or all of the tools prohibited by Initative 350. Finding of Fact 8.5.

When Initiative 350 was scheduled to take effect,[4] thousands of students in the appellee school district were already attending schools that had achieved a measure of racial balance. No error was

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[4] The effective date of Initiative 350 was December 7, 1978 [Finding of Fact 7.26], well into the first year of implementation of The Seattle Plan.

or could seriously have been assigned to the district court's finding that implementation of Initiative 350 would result in increasing racial imbalance in the public schools in these districts. Finding of Fact 8.1. When these two factual propositions are considered together, the reality is that under Initiative 350 those same thousands of individual students who are now attending desegregated schools would be likely to return to the segregated schools they would have attended but for the adoption of The Seattle Plan.

The integrated public schools in the appellees' school districts are functioning peacefully, smoothly, and effectively. The Seattle Plan stands as an example of the immense benefits of a local solution to this most complex social issue. It would be tragic in the extreme if opponents of The Seattle Plan could abort that plan by legislation that could result in a

desegration plan imposed by the district court after trial on the issue of past intentional discrimination by predecessor school boards.

If Initiative 350 were held to be constitutional, this Court would have provided a blueprint for the systematic reversal of any past program or action taken for the benefit of a racial minority, with the exception of a program or action resulting from a court order. The formula would be simple: restructure the political process to remove the authority of the person or entity which had adopted the program or action, using superficially "race neutral" language. Under such a blueprint, it would even be permissible to admit that the legislation removing the authority was enacted for the purpose of depriving a racial minority of a benefit previously secured for it.

A restructing of the political process such as that attempted to be accomplished by Initiative 350 is precisely the evil which this court perceived in Hunter v. Erickson, 393 U.S. 385 (1969). While the form of Initiative 350 may be slightly more subtle than the Akron City Charter amendment struck down in Hunter, supra, the effect is every bit as pernicious.

The appellants having failed to raise a sbstantial federal question, this appeal should be dismissed or the decision of the Court of Appeals for the Ninth Circuit should be affirmed.

Dated this 24th day of July, 1981.

Respectfully submitted,

Frederick L. Noland
MacDONALD, HOAGUE & BAYLESS
Attorneys for American
Civil Liberties Union
of Washington, et al.

Philip L. Burton
BURTON, CRANE & BELL
Attorneys for Seattle Branch,
National Association for
Advancement of Colored
People, et al.

William H. Neukom
SHIDLER, McBROOM, GATES
& BALDWIN
Attorneys for Seattle Urban
League, et al.

William L. E. Dussault
SWEET & DUSSAULT
Attorneys for American
Friends Service Committee,
et al.

Thomas A. Lemly
DAVIS, WRIGHT, TODD, RIESE
& JONES
Attorneys for Church Council
of Greater Seattle, et al.

James S. Rogers
FRANCO, ASIA, BENSUSSEN, COE
& FINEGOLD
Attorneys for Seattle Chapter
of the American Jewish
Council

Hall Baetz
Stew Cogan
DAVIS, WRIGHT, TODD, RIESE
& JONES
Attorneys for East Pasco
Neighborhood Council,
et al.